

CLOSED, ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:11-cv-09336-CM**

The New York Times Company et al v. United States
Department of Justice
Assigned to: Judge Colleen McMahon
Related Case: 1:12-cv-00794-CM
Cause: 05:552 Freedom of Information Act

Date Filed: 12/20/2011
Date Terminated: 01/24/2013
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff**The New York Times Company**

represented by **David Edward McCraw**
The New York Times Company (10018)
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LEAD ATTORNEY
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Plaintiff**Charlie Savage**

represented by **David Edward McCraw**
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Plaintiff**Scott Shane**

represented by **David Edward McCraw**
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V.

Defendant**United States Department of Justice**

represented by **Sarah Sheive Normand**
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Date Filed	#	Docket Text
12/20/2011	<u>1</u>	COMPLAINT against United States Department of Justice. (Filing Fee \$ 350.00, Receipt Number 4996) Document filed by The New York Times Company, Charlie Savage, Scott Shane.(ama) (Entered: 12/22/2011)
12/20/2011		SUMMONS ISSUED as to United States Department of Justice, U.S. Attorney and U.S. Attorney General. (ama) (Entered: 12/22/2011)
12/20/2011		Magistrate Judge James C. Francis IV is so designated. (ama) (Entered: 12/22/2011)

12/20/2011		Case Designated ECF. (ama) (Entered: 12/22/2011)
12/20/2011	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Charlie Savage, Scott Shane, The New York Times Company.(ama) (Entered: 12/22/2011)
01/10/2012	<u>3</u>	ORDER SCHEDULING AN INITIAL PRETRIAL CONFERENCE: Initial Conference set for 2/24/2012 at 11:30 AM in Courtroom 14C, 500 Pearl Street, New York, NY 10007 before Judge Colleen McMahon. Additional relief as set forth in this Order. (Signed by Judge Colleen McMahon on 1/10/12) (pl) (Entered: 01/10/2012)
01/13/2012	<u>4</u>	NOTICE OF APPEARANCE by Sarah Sheive Normand on behalf of United States Department of Justice (Normand, Sarah) (Entered: 01/13/2012)
01/23/2012	<u>5</u>	ANSWER to <u>1</u> Complaint. Document filed by United States Department of Justice.(Normand, Sarah) (Entered: 01/23/2012)
02/24/2012		Minute Entry for proceedings held before Judge Colleen McMahon: Initial Pretrial Conference held on 2/24/2012. Decision: Initial conference held. A briefing schedule was entered. The Government must move before April 13, 2012; responses to its motion are due May 11, 2012, at which time the opponents are free to cross-move; and the Governments reply and, if appropriate, opposition to the cross-motion is due May 25, 2012. Cross-movants should not file a reply unless instructed to do so by the Court. (Submitted By Scott Danner). (mde) (Entered: 02/24/2012)
04/09/2012	<u>6</u>	ENDORSED LETTER addressed to Judge Colleen McMahon from Sarah S Normand dated 4/9/2012 re: Request for a ten day extension of time to file a motion for summary judgment and to file a consolidated brief of up to 40 pages in both cases. ENDORSEMENT: Ok, but dont ask for any more time. If government official can give speeches about this matter without creating security problem, any involved agency can. (Signed by Judge Colleen McMahon on 4/9/2012) (cd) (Entered: 04/09/2012)
04/23/2012	<u>7</u>	ENDORSED LETTER addressed to Judge Colleen McMahon from Stuart Delery and Preet Bharara dated 4/23/2012 re: We write respectfully on behalf of the Department of Justice, the Department of Defense and the Central Intelligence Agency (collectively, the "Government") to seek a further extension, until May 21, 2012, of the Government's deadline to file its consolidated motion for summary judgment. ENDORSEMENT: I have read Director Clapper's declaration (which must remain under seal – believe me, I appreciate the irony) and I will grant the extension requested by the government. The time to file its motion is extended to May 21, 2012. (Motions due by 5/21/2012.) (Signed by Judge Colleen McMahon on 4/23/2012) (rjm) (Entered: 04/23/2012)
04/23/2012	<u>8</u>	ENDORSED LETTER addressed to Judge Colleen McMahon from Stuart Delery and Preet Bharara dated 4/23/12 re: Counsel for the defendant requests a further extension, until 5/21/12, of the Government's deadline to file his consolidated motion for summary judgment. ENDORSEMENT: I have read Director Clepper's declaration (which must remain under seal–believe me, I appreciate the irony) and I will grant the extension requested by the government. The time to file its motion is extended to May 21, 2012. (Motions due by 5/21/2012.) (Signed by Judge Colleen McMahon on 4/23/2012) (mro) (Entered: 04/24/2012)
05/21/2012		Minute Entry for proceedings held before Judge Colleen McMahon: Telephone Conference held on 5/21/2012. Decision: Phone conference held. Defendants must move on or before June 20, 2012. Plaintiffs have four weeks thereafter to file responses.(Submitted By Benjamin T. Alden). (mde) (Entered: 05/21/2012)
06/19/2012	<u>9</u>	ENDORSED LETTER addressed to Judge Colleen McMahon from Susan S. Normand dated 6/18/12 re: Counsel for the Government seeks leave to file a consolidated brief of up to fifty pages in both cases in support of the Government's motion for summary judgment. ENDORSEMENT: Ok. (Signed by Judge Colleen McMahon on 6/19/2012) (mro) (Entered: 06/19/2012)
06/20/2012	<u>10</u>	MOTION for Summary Judgment. Document filed by United States Department of Justice.(Normand, Sarah) (Entered: 06/20/2012)

06/20/2012	<u>11</u>	DECLARATION of Sarah S. Normand in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(Normand, Sarah) (Entered: 06/20/2012)
06/20/2012	<u>12</u>	MEMORANDUM OF LAW in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 06/20/2012)
06/21/2012	<u>13</u>	DECLARATION of John F. Hackett in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 06/21/2012)
06/21/2012	<u>14</u>	DECLARATION of John Bennett in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Normand, Sarah) (Entered: 06/21/2012)
06/21/2012	<u>15</u>	DECLARATION of John E. Bies in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Normand, Sarah) (Entered: 06/21/2012)
06/21/2012	<u>16</u>	DECLARATION of Robert R. Neller in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J)(Normand, Sarah) (Entered: 06/21/2012)
06/21/2012	<u>17</u>	DECLARATION of Douglas R. Hibbard in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F)(Normand, Sarah) (Entered: 06/21/2012)
06/21/2012	<u>18</u>	NOTICE of Classified Filing re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 06/21/2012)
07/18/2012	<u>19</u>	CROSS MOTION for Summary Judgment. Document filed by Charlie Savage, Scott Shane, The New York Times Company.(McCraw, David) (Entered: 07/18/2012)
07/18/2012	<u>20</u>	MEMORANDUM OF LAW in Support re: <u>19</u> CROSS MOTION for Summary Judgment.. Document filed by Charlie Savage, Scott Shane, The New York Times Company. (McCraw, David) (Entered: 07/18/2012)
07/18/2012	<u>21</u>	DECLARATION of NABIHA SYED in Support re: <u>19</u> CROSS MOTION for Summary Judgment.. Document filed by Charlie Savage, Scott Shane, The New York Times Company. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit)(McCraw, David) (Entered: 07/18/2012)
07/20/2012	<u>22</u>	ENDORSED LETTER addressed to Judge Colleen McMahon from Sarah S. Normand dated 7/20/2012 re: We write respectfully on behalf of defendants the Department of Justice and its component, the Office of Legal Counsel; the Department of Defense and its component, the United States Special Operations Command; and the Central Intelligence Agency (collectively, the "Government") in the above-named related cases brought pursuant to the Freedom of Information Act ("FOIA") to request that the Court set a deadline of August 8, 2012, for the filing of the Government's reply and opposition to plaintiffs' respective cross-motions in these cases. ENDORSEMENT: OK., (Responses due by 8/8/2012., Replies due by 8/8/2012.) (Signed by Judge Colleen McMahon on 7/20/2012) (lmb) (Entered: 07/20/2012)
08/08/2012	<u>23</u>	REPLY MEMORANDUM OF LAW in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand,

		Sarah) (Entered: 08/08/2012)
08/08/2012	<u>24</u>	DECLARATION of Douglas Hibbard in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 08/08/2012)
08/09/2012	<u>25</u>	DECLARATION of Mark Herrington in Support re: <u>10</u> MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 08/09/2012)
08/09/2012	<u>26</u>	MEMORANDUM OF LAW in Opposition re: <u>19</u> CROSS MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 08/09/2012)
08/09/2012	<u>27</u>	DECLARATION of Mark Herrington in Opposition re: <u>19</u> CROSS MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 08/09/2012)
08/09/2012	<u>28</u>	DECLARATION of Douglas Hibbard in Opposition re: <u>19</u> CROSS MOTION for Summary Judgment.. Document filed by United States Department of Justice. (Normand, Sarah) (Entered: 08/09/2012)
08/27/2012	<u>29</u>	REPLY MEMORANDUM OF LAW in Support re: <u>19</u> CROSS MOTION for Summary Judgment.. Document filed by Charlie Savage, Scott Shane, The New York Times Company. (McCraw, David) (Entered: 08/27/2012)
09/21/2012	<u>30</u>	ENDORSED LETTER addressed to Judge Colleen McMahon from David McCraw dated 9/21/2012 re: Plaintiffs and Defendant respectfully ask for permission to submit on or before October 1, 2012 three–page letters discussing the significance of the new decision for the pending summary judgment motions. ENDORSEMENT: Excellent idea – we have been reading the decision carefully. (Signed by Judge Colleen McMahon on 9/21/2012) (rjm) (Entered: 09/21/2012)
10/02/2012	<u>31</u>	ENDORSED LETTER addressed to Judge Colleen McMahon, from Sarah S. Normand, dated 10/1/2012, re: on behalf of defendants, request an unopposed extension of time, until October 10, 2012, for the parties to submit simultaneous supplemental letter briefs addressing the Second Circuit's recent decision in Brennan Center v. Department of Justice, No. 11–4599 (2d Cir. Sept. 20, 2012). ENDORSEMENT: OK. (Signed by Judge Colleen McMahon on 10/2/2012) (ja) (Entered: 10/02/2012)
01/02/2013	<u>32</u>	ORDER: #102747 terminating <u>10</u> Motion for Summary Judgment; terminating <u>19</u> Motion for Summary Judgment. The Government's motion for summary judgment is granted except to the extent of permitting the DoD to submit a supplemental and more fulsome justification for why the deliberative process privilege applies to the two Unclassified Memos on its Vaughn Index. Plaintiffs' cross motions for summary judgment are denied except as to the open issue described above. This constitutes the decision and order of the Court. The Clerk of the Court is directed to remove the motions at Docket 11 Civ. 9336 # 10 and 19 and Docket 12 Civ. 794 # 24 and 34 from the Court's list of open motions.(Signed by Judge Colleen McMahon on 1/2/2013) (ago) (Additional attachment(s) added on 1/2/2013: # <u>1</u> Order) (mde). Modified on 1/7/2013 (jab). (Entered: 01/02/2013)
01/03/2013	<u>33</u>	CORRECTED OPINION GRANTING THE GOVERNMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT: #102747 The Government's motion for summary judgment is granted except to the extent of permitting the DoD to submit a supplemental and more detailed justification for why the deliberative process privilege applies to the two Unclassified Memos on its Vaughn Index. Plaintiffs' cross motions for summary judgment are denied except as to the open issue described above. This constitutes the decision and order of the Court. The Clerk of the Court is directed to remove the motions at Docket 11 Civ. 9336 # 10 and 19 and Docket 12 Civ. 794 # 24 and 34 from the Court's list of open motions. (Signed by Judge Colleen McMahon on 1/3/2013) Copies Sent By ECF By Chambers. (cd) Modified on 1/7/2013 (jab). (Entered: 01/03/2013)

01/22/2013	<u>34</u>	DECISION AND ORDER: Accordingly, the Government's motion for summary judgment with respect to the Unclassified Memos is granted and Plaintiffs' cross motions for summary judgment are denied. The Clerk of the Court is directed to enter judgment for the Government and to close both cases. This constitutes the decision and order of the Court. (Signed by Judge Colleen McMahon on 1/22/2013) (dj) (Entered: 01/22/2013)
01/22/2013		Transmission to Judgments and Orders Clerk. Transmitted re: <u>34</u> Order, to the Judgments and Orders Clerk. (dj) (Entered: 01/22/2013)
01/24/2013	<u>35</u>	CLERK'S JUDGMENT That for the reasons stated in the Court's Decision and Order dated January 22, 2013, the Governments motion for summary judgment with respect to the Unclassified Memos is granted and Plaintiffs cross motions for summary judgment are denied; accordingly, both of the cases are closed. (Signed by Clerk of Court Ruby Krajick on 1/24/13) (Attachments: # <u>1</u> Notice of Right to Appeal)(dt) (Entered: 01/24/2013)